THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable J. Derham Cole, Circuit Court Judge

The State.....Respondent,

v.

Alphonso Chaves Thompson .....Petitioner.

Opinion No. 5341
Heard June 11, 2015—Filed August 12, 2015

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that a Petition for Rehearing was filed with the Court of Appeals on September 14, 2015 and denied by Order dated September 30, 2015.

INTRODUCTION

Any unbiased reader of the affidavit in this case would conclude that Petitioner was probably a drug dealer. Whether that same reader would find a ***substantial basis*** to conclude that drugs would be in his parents' house on May 13, 2010 is another matter entirely. Chief Judge Few would not. The trial court, and two Judges of the Court of Appeals, did.

In so finding, the Court of Appeals condoned drug officers searching a residence that did not belong to their target without first establishing a timely link between drugs and that residence simply because they demonstrated their target was likely a drug dealer. The Court's failure to give sufficient weight to that critical distinction must be rectified.

Although Constitutional challenges to warrant affidavits likely occupy a significant portion of this Court's certiorari docket, this is not the mine-run case. For the reasons that follow, Petitioner respectfully requests that his Petition for a Writ of Certiorari be granted.

QUESTION PRESENTED

Did the Court of Appeals err in upholding the trial court's denial of Petitioner's suppression motion where the affidavit established Petitioner likely sold drugs but did not provide a substantial basis to conclude that drugs would be found at River Street on the day of the search?

STATEMENT OF THE CASE

I. BACKGROUND

In May of 2010, Petitioner Alphonso Chaves Thompson, aka "Pooh Bear" was arrested and later charged with trafficking cocaine; possession with intent to distribute marijuana; and possession of a firearm during the commission of a violent crime. (App. p.8, ll.10–15; pp. 356-58). Petitioner was charged with these crimes after drugs and guns were found at his parents' home at 121 River Street ("River Street")[1] in the Drayton community of Spartanburg. (App. p.35, ll.14–23; p.35, ll.18–23). At the time of his arrest, and for several years prior, Petitioner lived in Fountain Inn, Greenville County. (App. p.35, ll.16–17; p.43, ll.6–10; p.235, l.3 – p.236, l.4; p.237, ll.10–19).

II. THE INVESTIGATIONS

**As this is a search warrant case, these facts are drawn primarily from the Spartanburg County Narcotics Division's (SCND) warrant affidavit.*

A. The First Investigation: 2007-2009

In June of 2007, two confidential informants told Investigator Chris Raymond of the SCND they were buying cocaine from Petitioner. (App. p.4). In 2008, an informant told Inv. Raymond that Petitioner resided "at the end of River St." In January of 2009, "two more different" informants identified Petitioner as a cocaine supplier. (App. p.4).

In February of 2009, Jose Luis Diaz-Arroyo was arrested while transporting a kilogram of cocaine. (App. p.4). According to Inv. Raymond, after Diaz-Arroyo was arrested he (Diaz-Arroyo) stated that his brother-in-law, Alejandro Sosa-Galvan, was supplying Petitioner with cocaine "at this River St." address. (App. p.4).

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[1] At trial, the home was alternatively referred to as River "Drive" and River "Street." The Court of Appeals used River "Street" and Petitioner does the same here.

In July of 2009, task force officers[2] had an unknown informant conduct a "controlled buy" from a man named Deangelo Young, aka "Little Man." (App. p.5). Little Man took $4,000 from this unknown informant and met with Petitioner at Petitioner's girlfriends' house at 1868 Tamara Way in Greenville. (*Id.*) Little Man later returned and gave this unknown informant four ounces of cocaine. Little Man's transaction did not involve River Street and Petitioner was not arrested or charged.

B. The Second Investigation: 2010

In Spring 2010, Petitioner visited his parents' house. (*Id.*) On May 11, 2010, the SCND bought cocaine from a man named Arthur Jones. When Jones was subsequently arrested, he told the task force that he was buying cocaine from Petitioner and the officers convinced Jones to cooperate. (*Id.*) The following day, May 12, Jones called Petitioner's cell phone. (*Id.*) After this conversation, Petitioner arrived at ***Jones's home***, took money from Jones, and left—no drugs were exchanged. (*Id.*; p.45, ll.1–12). Notably, the affidavit does not say Petitioner left ***for*** Jones's home ***from*** River Street or that he ***visited*** River Street when he departed.

III. THE WARRANT

That same day, Inv. Raymond applied to Circuit Court Judge Hayes for a warrant to search River Street.[3] Inv. Raymond did not present any sworn testimony. (App. p.12, l.19 – p.13, l.2; p.52, ll.3–4; p. 3-5). Thus, the affidavit was the only basis for the River Street search. (App. p.51, l.17 – p. 52, l.5).

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[2] This case arose from a joint federal/state task force investigation and included officers from the SCND and the Drug Enforcement Administration.

[3] Curiously, Inv. Raymond sought and obtained an arrest warrant for Petitioner on the same day but from a different judge—Spartanburg magistrate Charles Jones. (App. p.86, ll.3–5; App. p.1).

Conspicuously absent from this affidavit—the vast majority of which details an investigation that took place two to three years prior to the search—is any indication as to how or why the informants were supposedly reliable.[4] In particular, it does not explain who Sosa-Galvan—***the only informant who specifically linked drugs to River Street***—is, let alone explain why he was allegedly reliable. Indeed, the only Sosa-Galvan "statement" in the affidavit ***is not even his statement***. Instead, it is a hearsay statement from Diaz-Arroyo ***about*** Sosa-Galvan delivering drugs to River Street—a year and a half before the search.

Perhaps most importantly, the affidavit gives virtually no indication or explanation about what the officers were doing between February 2009—when Diaz-Arroyo told them about River Street—and May 13, 2010—when they actually executed the search warrant. In sum, the affidavit does not establish with any specificity why drugs were going to be found at River Street ***that day***.

IV. MAY 13, 2010

A. The Searches

On May 13, 2010, officers simultaneously executed search warrants at Petitioner's home on Larchwood Drive in Greenville; his girlfriend's home on Tamara Way; and River Street in Spartanburg. (App. p.7, ll.12–22; p.8, ll.4–9). No drugs or any other contraband were found at Larchwood Drive or Tamara Way.

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[4] Inv. Raymond creatively referred to the informants as "Confidential Reliable Informants" or "CRIs." Calling someone reliable does not make it so. *See U.S. v. Wilhelm*, 80 F.3d 116, 121 (4th Cir. 1996) (affidavit that uses phrases such as "concerned citizen," "mature person," and describes informant as having a "truthful demeanor" does not cover for fact that no evidence of reliability has been provided).

B. The Arrest and Confession

With the searches underway, but before anything was found, officers arrested Petitioner at his body shop, Ridiculous Rides, and transported him to River Street. (App. p.84, l.21 – p.85, l.19; p.86, ll.19–21; p.145, l.24 – p. 146, l.13). He was arrested pursuant to a separate warrant based on the Jones "transaction" that did not actually involve any drugs. (App. p.52, l.14 – p.53, l.13; p.85, ll. 3–11; p.88, l.17 – p.89, l.6).

During a four-hour interrogation at River Street, Inv. Raymond and Special Agent Russell Davis of the DEA told Petitioner they found drugs and weapons on the property. (App. p.245, ll.6–7; p.247, ll.2–15). When Petitioner denied any knowledge of either, both repeatedly told him they would arrest his parents if he did not confess. (App. p.247, l.13 – p.248, l.9). Petitioner believed his elderly father could not survive in jail so he confessed to the drugs; he did not confess to owning, or even mention, any weapons. (App. p.74, l.3 – p.75, l.17; pp. 2-5).

V. THE FEDERAL CASE[5]

A. The Conspiracy Charge

In October of 2010, Petitioner was indicted for the federal crime of conspiracy to distribute narcotics. (App. p.8, l.25 – p.9, l.3). Greenville County, where Petitioner resided, commenced asset forfeiture proceedings and seized currency found at Petitioner's house on Larchwood Drive. (App. p.9, ll.7–9).

B. Charge Dismissed

Three months later, after voluminous discovery and several motions, the U.S. Attorney dismissed the conspiracy charge. (App. p.9, ll.10–13). According to trial

[5] This section is drawn from trial counsel's background recitation to the trial court during the state court suppression hearing.

counsel—who represented Petitioner in federal and state court—assistant U.S. Attorney Mormon stated that he (Mormon) had had misgivings about the probable cause for River Street from the beginning and the discovery process had not changed his mind. (App. p.9, ll.14–20).

Again, according to Mr. Mormon, prior to Judge Hayes issuing the search warrant, two federal magistrates rejected the affidavit and Mormon did not believe there was probable cause for the search. (App. p.10, ll.13–18). Greenville County withdrew forfeiture proceedings and returned Petitioner's money, indicating they could not carry their burden of proof. (App. p.11, ll.12–16).

VI. THE STATE'S CASE

Following the federal dismissal, Petitioner was indicted in Spartanburg County for the same drugs on charges of trafficking cocaine 400 grams; possession of marijuana with intent to distribute; and possession of a weapon during the commission of a violent crime. (App. p.11, ll.5–11; pp. 356-59).

A. Suppression Hearing

During an extensive pre-trial suppression hearing, Petitioner argued the affidavit: (1) did not establish that drugs were likely to be found at River Street on the day of the search[6]; (2) failed to demonstrate the informants' reliability; (3) provided extremely stale

[6] Noone disputes that Petitioner did not reside at or own River Street. Petitioner's mother was purchasing the home from Ernest Grant, the homeowner, via a lease-to-own contract. (App. p.93, l.23 – p.96, l.25; p.101, l.21 – p.102, l.7; p.239, l.14 – p.240, l.14; pp. 346-49). An officer on the search team testified Petitioner did not live there and Inv. Raymond's arrest warrant affidavit listed Petitioner's address as 110 Larchwood Dr. Simpsonville, SC. (App. p. 1; p.135, ll.18–23). The trial court found, and the State has not disputed, that Petitioner had a reasonable expectation of privacy in the home. (App. pp. 30-44).

information; and (4) was filled with conclusory statements.[7] (App. p.60, l.12 – p.89, l.17). Petitioner's motion was denied. (*Id.*).

B. Trial

Not a single witness testified Petitioner owned or even exercised dominion and control over River Street and the State did not produce any fingerprints or otherwise link Petitioner to the drugs. (App. p.226, l.22 – p.229, l.20). Nonetheless, Petitioner's directed verdict motion was denied. (App. p.230, ll.6–9; p.230, l.15 – p.231, l.8).

Following Petitioner's testimony, where he again denied knowledge of the drugs and weapons, the jury found him guilty on all three counts. (App. p.259, ll.12–14; p.327, l. 7 – p.328, l.24). The trial court sentenced Petitioner to concurrent terms of twenty-five, five, and five years' imprisonment, respectively. (App. p.330, ll.5–21).

VII. THE COURT OF APPEALS

On appeal, Petitioner argued, *inter alia*, that: (1) the trial court erred in denying his suppression motion; (2) all evidence at River Street should have been suppressed as fruit of the poisonous tree; (3) the good faith exception did not apply; and (4) the trial court's error was prejudicial and not harmless. (App. pp. 391-401; pp. 456-468)

A. The Panel Majority

By published opinion, a panel majority for the Court of Appeals disagreed. Although the majority agreed "the affidavit fail[ed] to set forth information as to the veracity, reliability or basis of knowledge of several of the informants referenced" and that both Jeter's and Meadows's statements and the critical Diaz-Arroyo double-hearsay

[7] The State argued that an informants' reliability does not "ha[ve] to be corroborated" or "identified as reliable" and asked the trial court to place "great weight" on the fact that another circuit court judge, instead of a magistrate, issued the warrant. (App. p.45, ll.21–24; p.47, ll.14–19). The State provided no support for these theories because there is none.

statement (again, the only specific link between drugs and River Street) were "somewhat stale;" the majority ultimately concluded there was a "fair probability that contraband or evidence of a crime would be found at 120 River Street." *State v. Thompson*, 413 S.C. 590, ___, 776 S.E.2d 413, 420-22 (Ct. App. 2015). Accordingly, the trial court's ruling and Petitioner's convictions were affirmed. *Id.* at ___, 776 S.E.2d at 425.

B. The Dissent

Chief Judge Few dissented. He focused on the fact that River Street was not Petitioner's house and that the affidavit contained "no specific facts showing any connection between [Petitioner's] drug-related activity and the River Street home after February 11, 2009 [the date of Diaz-Arroyo's statement about Sosa-Galvan]." *Id.* at ___, 776 S.E.2d at 425 (Few, C.J., dissenting). Chief Judge Few recognized that the officers' "conclusory descriptions" of Petitioner's activities between July 2009 and May 2010 compared with their specific detail of his pre-July 2009 activities raised "serious questions" as to why that detail was lacking. *Id.* at ___, 776 S.E.2d at 426. Because the affidavit "did not provide the judge with a substantial basis for a finding of probable cause that evidence of [Petitioner's] drug-related activity would be found at River Street" Chief Judge Few would have reversed Petitioner's convictions in their entirety. *Id.*

The Court of Appeals denied Petitioner's timely Petition for Rehearing and this Petition for a Writ of Certiorari followed.

ARGUMENT

At a minimum, the majority recognized the affidavit was an extremely close call. That recognition, Chief Judge Few's dissent on the dispositive issue, and the officers' apparent judge shopping, are sufficient to warrant this Court's review. Upon review, Petitioner's convictions should be reversed.

I. THE COURT OF APPEALS ERRED IN HOLDING THE AFFIDAVIT PROVIDED A SUBSTANTIAL BASIS TO BELIEVE DRUGS WOULD BE FOUND AT RIVER STREET ON THE DAY OF THE SEARCH.

A. Standard of Review

On appeals from a motion to suppress, this Court applies a deferential standard of review and will reverse if there is clear error. *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). However, this deference does not bar this Court from conducting its own review of the record to determine whether the trial judge's decision was supported by the evidence. *Id.*

In conducting its own review, this Court must ensure the magistrate had a ***substantial basis*** upon which to conclude that probable cause existed. *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). In so doing, this Court can consider only information brought to the magistrate's attention. *State v. Gentile*, 373 S.C. 506, 513, 646 S.E.2d 171, 174 (Ct. App. 2007).

B. Totality of the Circumstances Test

This Court's review is governed by the totality of the circumstances test under which all circumstances, including status, basis of knowledge and veracity of the informants, the timeliness of the informants' information, and, most significant here, whether the ***things to be searched for*** were likely to be found ***in the residence in***

question—at the ***time of the search***. *Illinois v. Gates*, 462 U.S. 213, 230 (1983); *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978); *State v. Weston*, 329 S.C. 287, 290-91, 494 S.E.2d 801, 802-803 (1997).

C. Panel Majority Holding

Because Inv. Raymond did not supplement the affidavit with sworn testimony, the majority correctly looked solely to the four corners of the document. There, the majority found four pieces of information to support the conclusion that drugs would be ***in River Street*** at the ***time of the search***:

> (1) in 2007 and 2008, Thompson was supplying cocaine and delivering cocaine to the homes of his buyers;
>
> (2) in February 2009, authorities were informed that Thompson was being supplied multiple kilos of cocaine, and the cocaine was delivered to Thompson at River Street;
>
> (3) in the six-month period prior to issuance of the search warrant, investigators observed Thompson driving vehicles to and from River Street and observed him visiting River Street right before making cocaine deliveries; and
>
> (4) two days before the issuance of the warrant, an individual informed investigators he was buying nine ounces of cocaine a month from Thompson, on that date the individual spoke to Thompson, told him he was ready for more drugs, and the day before the warrant Thompson arrived at the individual's home where he received $9,000.

Thompson, 413 S.C. at ___, 776 S.E.2d at 421.

D. The Majority Erred

The affidavit generally, and the four pieces of information cited by the majority specifically, did not provide the issuing judge a ***substantial basis*** to conclude that drugs would be ***at River Street*** on the ***day of the search***.[8]

Piece 1 Jeter and Meadows

"The critical element in a reasonable search is not that the owner of the property is suspected of a crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Zurcher*, 436 U.S. at 556.

Piece 1 comes from June 2007 when "two unnamed informants indicated [Petitioner] had been supplying them with large amounts of cocaine" and from August 2007 and September 2008 when Jeter and Meadows stated Petitioner was delivering cocaine to their homes. (App. p.4). These statements do not support the conclusion that cocaine would be found at River Street on May 13, 2010. Indeed, nothing from these informants references River Street at all. This alone renders Piece 1 irrelevant. *See United States v. Lalor*, 996 F.2d 1578, 1582 (4th Cir. 1993) ("In determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched.").

Furthermore, although "[a] sufficient nexus can exist between a defendant's criminal conduct and ***his residence*** even when the affidavit supporting the warrant

[8] Because this is a certiorari petition, Petitioner primarily addresses here the Court of Appeals' holding. Petitioner, of course, noted several other reasons why the affidavit was deficient in his briefing before the Court of Appeals. Should this Court grant certiorari, Petitioner will expand his argument to include those remaining points. For brevity, those arguments can be found at (App. pp. 391-401; pp. 456-468) and are incorporated here by reference.

contains no factual assertions linking the items sought to the defendant's residence," *United States v. Grossman*, 400 F.3d 212, 217 (4th Cir. 2005) (emphasis added), River Street, as Chief Judge Few recognized, was ***not*** Petitioner's residence.

Moreover, the majority's heavy reliance on the fact that Jeter and Meadows were named in the affidavit was misplaced because neither of them were true "eyewitnesses" in the sense that "evidence of past reliability" was not required. *State v. Jones*, 342 S.C. 121, 128, 536 S.E.2d 675, 679 (2000). Here, both individuals were drug dealers themselves—not citizen eyewitnesses—and were, therefore, driven by self-serving ulterior motives—the expectation of lighter (or no) criminal charges. *Cf. State v. Bellamy*, 323 S.C. 199, 205, 473 S.E.2d 838, 842 (Ct. App. 1996) ("Like the informant in *Sullivan*, Stanley was not a paid informant and, from all appearances, lacked any ulterior motives for giving information to the police."); *see also State v. Sullivan*, 267 S.C. 610, 616, 230 S.E.2d 621, 616 (1976) (absence of ulterior motives sufficient to constitute reliability); *State v. Driggers*, 322 S.C. 506, 510-11, 473 S.E.2d 57, 59 (Ct. App. 1996) (deference due to a citizen roommate of robber who had no involvement in crime).

Thus, with no evidence as to whom Jeter and Meadows were and why they were supposedly reliable, the fact that their names were included in the affidavit was meaningless. *See Bellamy*, 323 S.C. at 206, 473 S.E.2d at 842 (Cureton, J., dissenting) ("Here, there is no indication [the informant] was known to either Agent Vaught or the magistrate. . . [f]rom the standpoint of the issuing magistrate, the name John Doe would have been just as meaningful.").

Finally, even if these informants were reliable, even the majority agreed that their information was "somewhat stale." *Thompson*, 413 S.C. at ____, 776 S.E.2d at 421.

Information from 2-3 years prior to a search is more than "somewhat" stale—it is Constitutionally deficient. *See State v. Winborne*, 273 S.C. 62, 65, 254 S.E.2d 297, 298 (1979) ("The time should be sufficiently short to justify the conclusion that the evidence is likely still at the place where it was seen."); *State v. Baker*, 251 S.C. 108, 110-11, 160 S.E.2d 556, 557 (1968) (42 days between issuance of warrant and search too long); *U.S. v. Brown*, 958 F.2d 369, *4 (4th Cir. 1992) (stale information where affidavit based on statements from four months prior); *State v. Thompson*, 363 S.C. 192, 206, 609 S.E.2d 556, 564 (Ct. App. 2005) (72 hours not stale); *State v. Clifton*, 302 S.C. 431, 433-34, 396 S.E.2d 831, 832-33 (Ct. App. 1990) (same).

The majority erred in giving any weight to the Jeter and Meadows statements.

Piece 2 Diaz-Arroyo's statement about Sosa-Galvan

"Generally, affidavits must be made on the affiant's personal knowledge of the facts alleged in the petition. The affidavit must in some way show that the affiant is personally familiar with the facts so that he could personally testify as a witness." *State v. Dunbar*, 361 S.C. 240, 248, 603 S.E.2d 615, 619 (Ct. App. 2004).

Piece 2 comes from the Diaz-Arroyo statement to Inv. Raymond that Sosa-Galvan was supplying Petitioner with cocaine at River Street. This statement was critically important because it is the ***only*** statement in the affidavit in which a specific individual placed cocaine (albeit more than a year before the search) at River Street.

As an initial matter, the majority erred in finding it significant that Diaz-Arroyo's and Sosa-Galvan's names are in the affidavit for the same reasons it erred regarding Jeter and Meadows—neither were citizen informants. Diaz-Arroyo was cooperating after an arrest and Sosa-Galvan did not actually make any statements.

Diaz-Arroyo's statement does not say ***he*** delivered drugs to River Street or even that he ***saw Sosa-Galvan*** deliver to River Street. Instead, the statement—at best—implies that Sosa-Galvan ***told*** Diaz-Arroyo ***he*** was delivering to River Street. In other words, Diaz-Arroyo "heard it from a friend, who heard it from a friend, who heard it from another." *State v. Robinson*, 454 S.W. 3d 428, 439 (Mo. Ct. App. 2015) (quoting REO SPEEDWAGON, Take It On The Run, on HI INFIDELITY (Epic Records 1980)). This double-hearsay statement should have been given minimal—if any—weight.

The fact that information provided in an affidavit is double-hearsay is relevant to its value in determining probable cause. *Dunbar*, 361 S.C. at 255, 603 S.E.2d at 623. Although double-hearsay does not "per se, invalidate the resulting search warrant," the hearsay upon hearsay statement will support the warrant only so long as the "underlying circumstances indicate there is a ***substantial basis*** for crediting hearsay ***at each level***." *Id.* (emphasis added); *Accord. Robinson*, 454 S.W. 3d at 439 (rejecting supposed reliability of double-hearsay statement because "[w]hile it may be the case that more specific details were provided to [the officer] or that particular source indeed had proven reliable in the past, [the officer] failed to communicate any basis of past reliability or how, if at all, the first source learned of drug sales at [defendant's] home so as to provide a substantial basis—the constitutional minimum—for probable cause.").

Again, there is absolutely no indication that Diaz-Arroyo was reliable and not even any indication as to who Sosa-Galvan ***is***, let alone how ***he*** was ***reliable***. He is not mentioned anywhere else in the affidavit. And, he supposedly provided this information to Diaz-Arroyo—another criminal informant—more than a year before the search. A year and a half old statement from a criminal cooperating after his arrest about what

another criminal (whose own reliability is not even discussed) told him, cannot be, and is not, enough. The majority gave too much weight to the Diaz-Arroyo statement and failed to analyze the fact that it constituted double-hearsay.

Piece 3 Investigator Raymond's observation

"Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." *State v. Philpot*, 317 S.C. 458, 461, 454 S.E.2d 905, 907 (Ct. App. 1995). Piece 3 is the only piece of information ***after January 2009*** relied on by the majority that actually refers to River Street. However, Inv. Raymond's conclusory statement gives no specific examples of any drug deliveries and does not otherwise provide a ***substantial*** basis for concluding that drugs would be found at River Street in May of 2010. As Chief Judge Few noted, these non-specific references, compared to specific statements pre-July 2009 and during May 2010, have the opposite effect of supporting probable cause.

The majority erred in failing to analyze the fact that the officers gave no specific information about River Street during the critical time period.

Piece 4 The Arthur Jones "transaction"

The majority erred in relying on the Jones "transaction" in which no drugs were actually exchanged. First, as noted, the affidavit does not say Petitioner left for Jones's house ***from*** River Street or that Petitioner ***visited*** River Street after leaving Jones's house with $9,000. Certainly, had Inv. Raymond observed any link between the Jones transaction and River Street, he would have included it in the affidavit. The rest of the Jones transaction is described in painstaking detail. Regardless, whether Inv. Raymond

observed any connection between the Jones "transaction" and River Street or not is irrelevant—he did not put it in the affidavit.

Second, the majority's reliance on *Grossman* to support the "logical" conclusion that Petitioner had to "retrieve the drugs from ***some location*** in order to complete the Jones' drug transaction," was misplaced. *Thompson*, 413 S.C. at ___, 776 S.E.2d at 422 (emphasis added). The conclusion that the drugs would be found in "some location" is not probable cause that they would be found at River Street on May 13, 2010.

Regardless, although the *Grossman* court did uphold a residential search of a home that was not the defendant's and explained that "the searches [were] not invalid merely because he splits his time among several different homes," the first home searched in *Grossman* was searched ***after*** a detective relayed ***specific*** observations from himself ***and*** a ***reliable*** informant about ***that house.*** *Grossman*, 400 F.3d at 217-18. Not so here. Here, no informant—reliable or otherwise—provided any link to River Street after January 2009. Furthermore, Petitioner was not "splitting his time" between any homes, he lived on Larchwood Drive in Greenville.

Finally, in *Grossman*, the other homes were searched (via two subsequent affidavits) only ***after*** drugs were found in the ***first home*** because "each [search] built upon the prior ones." *Id.* at 218. Again, not so here. Here, all three searches were executed simultaneously. Consequently, Inv. Raymond's affidavit should have—but did not—included ***at least*** one specific and direct link establishing that cocaine would be at River Street on May 13, 2010. There were none. Instead, he included a generic, undated reference that Petitioner visited his parents' house.

The majority gave too much weight to the Jones transaction and *Grossman*.

E. Subsidiary Questions

Although they were not analyzed by the majority because the Court upheld the trial court's denial of the suppression motion, Petitioner briefly addresses here the exclusionary rule and fruit of the poisonous tree; the good faith exception; and harmless error. *See* Rule 242(d)(2), SCACR ("A question presented will be deemed to include every subsidiary question fairly comprised therein.").

1. The Exclusionary Rule and Fruit of the Poisonous Tree

The purpose of the exclusionary rule is to deter Fourth Amendment violations. *State v. Brown*, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012). It "compel[s] respect for the constitutional guaranty in the only effectively available way—by removing incentive to disregard it." *State v. Jenkins*, 398 S.C. 215, 229, 727 S.E.2d 761, 768 (Ct. App. 2012). The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police and the evidence that has been obtained by the exploitation of that illegality. *Hutto v. State*, 376 S.C. 77, 81, 654 S.E.2d 846, 848 (Ct. App. 2007).

Noone disputes that the police only gained access to River Street pursuant to the search warrant. Thus, no independent grounds exist to permit introduction of the drugs or weapons or of Petitioner's confession, which was made at River Street only after the drugs were found. Accordingly, the exclusionary rule applies and ***all evidence*** found at River Street, including Petitioner's confession, should have been suppressed.[9] *See In re*

[9] In dissent, Chief Judge Few noted the "vast majority of the drugs for which Petitioner was convicted were seized from the River Street home." *Thompson*, 413 S.C. at ___, 776 S.E.2d at 425 (Few, C.J., dissenting). That statement is factually incorrect. ***All*** of the drugs and weapons were seized at River Street—nothing was found anywhere else.

Jeremiah W., 361 S.C. 620, 624 n.2, 606 S.E.2d 766, 768 n.2 (2004) (taint of an illegal search can only be removed if the items or facts were obtained independent of the illegal act).

2. The Good Faith Exception

Before the Court of Appeals, the State argued that its officers acted in good faith such that even if the warrant was deficient, the evidence should not be suppressed. (App. pp. 433-436); *see generally United States v. Leon*, 468 U.S. 897, 913 (1984) (suppression may not be mandated if evidence is obtained by officers reasonably relying on a warrant issued by a detached and neutral magistrate). The trial court heard arguments regarding good faith but, naturally, the Court of Appeals did not reach the issue because it found the affidavit sufficient. Inv. Raymond's judge shopping was the antithesis of good faith.

An officer's belief must be ***objectively*** reasonable in order for the good faith exception to apply, meaning a court's "good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *Id.* at 922 n.23. "In making this determination, all of the circumstances—***including whether the warrant application had previously been rejected by a different magistrate***—may be considered." *Id.* (emphasis added).

Inv. Raymond's conduct in obtaining the search warrant was by no means objectively reasonable. Having been denied by not one but two federal magistrates, he knew, or should have known, the affidavit was deficient. Yet he and his team continued to search until they found a judge willing to approve their request. This was not a "responsible law-enforcement officer[]" taking care to "learn what [wa]s required of

[him] under the Fourth Amendment" and then "conforming" his "conduct to those rules." *Davis v. U.S.*, 131 S.Ct. 2419, 2429 (2011); *see also U.S. v. Stephens*, 764 327, 345 (4th Cir. 2014) (Thacker, J., dissenting) ("The good faith exception at its core requires officers to act with an objectively reasonable good-faith belief that their conduct is lawful." (internal quotation marks omitted)).

3. Harmless Error

Although Constitutional errors can be harmless, *State v. Reeves*, 301 S.C. 191, 193-94, 391 S.E.2d 241, 243 (Ct. App. 2005), the only evidence at trial were the drugs and weapons themselves and Petitioner's confession—all of which were obtained solely as a result of the search warrant. Thus, the failure to exclude this evidence could not be considered an "insubstantial error not affecting the result." *State v. Covert*, 368 S.C. 188, 196-97, 628 S.E.2d 482, 487 (Ct. App. 2006). Had the trial court correctly granted Petitioner's suppression motion, there would not have been a trial.

CONCLUSION

For these reasons, Petitioner respectfully requests that the Court grant certiorari to consider the Court of Appeals' August 12, 2015 Opinion.

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable J. Derham Cole, Circuit Court Judge

The State.....Respondent,

v.

Alphonso Chaves Thompson .....Petitioner.

Opinion No. 5341
Heard June 11, 2015—Filed August 12, 2015

PROOF OF SERVICE

I hereby certify that I have served the foregoing Petition for a Writ of Certiorari on the Respondent by placing a copy of the same in the United States mail, addressed to Mark Reynolds Farthing, Post Office Box 11549, Columbia, South Carolina 29211.

This 27 day of October, 2015.

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